

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SAM CARLISLE,

Plaintiff,

v.

USA TRUCK, INC., JAMES D. REED, M.
SUSAN CHAMBERS, ROBERT E.
CREAGER, GARY R. ENZOR, BARBARA J.
FAULKENBERRY, ALEXANDER D.
GREENE, and RAJAN C. PENKAR,

Defendants.

Civil Action No. _____

**COMPLAINT FOR VIOLATIONS
OF THE SECURITIES EXCHANGE
ACT OF 1934**

JURY TRIAL DEMAND

Plaintiff Sam Carlisle (“Plaintiff”) alleges the following upon information and belief, including investigation of counsel and review of publicly available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

NATURE OF THE ACTION

1. Plaintiff brings this action against USA Truck, Inc. (“USA Truck” or the “Company”) and USA Truck’s Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934, 15.U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. § 240.14a-9, arising out of the Board’s attempt to sell the Company to Schenker, Inc., through its wholly-owned subsidiary Tango Merger, Inc. (collectively “DB Schenker”).

2. Defendants have violated the above-referenced Sections of the Exchange Act by causing a materially incomplete and misleading definitive proxy statement (the “Proxy”) to be filed with the Securities and Exchange Commission (“SEC”) on August 3, 2022. The Proxy recommends that USA Truck stockholders vote in favor of a proposed transaction (the “Proposed

Transaction”) whereby USA Truck is acquired by DB Schenker. The Proposed Transaction was first disclosed on June 24, 2022, when USA Truck and DB Schenker announced that they had entered into a definitive merger agreement (the “Merger Agreement”) pursuant to which DB Schenker will acquire all of the outstanding shares of common stock of USA Truck for \$31.72 per share (the “Merger Consideration”). The deal is valued at approximately \$435 million and is expected to close by the end of 2022.

3. The Proxy is materially incomplete and contains misleading representations and information in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy contains materially incomplete and misleading information concerning the financial projections prepared by USA Truck management, as well as the financial analyses conducted by Evercore Group L.L.C. (“Evercore”), USA Truck’s financial advisor.

4. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction, including filing an amendment to the Proxy with the SEC or otherwise causing an amendment to the Proxy to be disseminated to USA Truck’s stockholders, unless and until the material information discussed below is included in the Proxy or otherwise disseminated to USA Truck’s stockholders. In the event the Proposed Transaction is consummated without the material omissions referenced below being remedied, Plaintiff seeks to recover damages resulting from the Defendants’ violations.

PARTIES

5. Plaintiff is, and has been at all relevant times, the owner of shares of common stock of USA Truck.

6. Defendant USA Truck is a corporation organized and existing under the laws of the State of Delaware. The Company’s principal executive offices are located 3200 Industrial Park

Road, Van Buren, Arkansas 72956. USA Truck common stock trades on the Nasdaq Global Select Market under the ticker symbol “USAK.”

7. Defendant James D. Reed has been the President, Chief Executive Officer, and a director of the Company since 2017.

8. Defendant M. Susan Chambers has been a director of the Company since 2016.

9. Defendant Robert E. Creager has been a director of the Company since 2012.

10. Defendant Gary R. Enzor has been a director of the Company since 2014.

11. Defendant Barbara J. Faulkenberry has been a director of the Company since 2016.

12. Defendant Alexander D. Greene has been a director of the Company since 2014.

Defendant Greene also serves as Chairman of the Board.

13. Defendant Rajan C. Penkar has been a director of the Company since March 2021.

14. Nonparty Schenker, Inc. is a New York corporation. Schenker, Inc.’s principal executive offices are located at 1305 Executive Boulevard, Suite 200, Chesapeake, VA 23320.

15. Nonparty Tango Merger, Inc. is a Delaware corporation and a wholly owned subsidiary of Schenker, Inc.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

17. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under

traditional notions of fair play and substantial justice.

18. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because a significant amount of the conduct at issue took place and had an effect in this District.

FURTHER SUBSTANTIVE ALLEGATIONS

A. Background of the Company and the Proposed Transaction

19. USA Truck transports freight throughout North America via trucks and rail. The Company also provides logistics services to its clients. In 2021, USA Truck brought in \$710.3 million in revenue, a 28.9% increase over 2020.

20. On June 23, 2022, the Company entered into the Merger Agreement with DB Schenker.

21. According to the press release issued on June 24, 2022 announcing the Proposed Transaction:

DB Schenker and USA Truck to Combine and Create Premier North American Transportation Solutions Provider

USA Truck Stockholders to Receive \$31.72 per Share in Cash

DB Schenker's Resources and Complementary Capabilities to Enable USA Truck to Accelerate its Long-Term Growth Strategy

VAN BUREN, AR and ESSEN, GERMANY – June 24, 2022 – DB Schenker, one of the world's leading logistics service providers, and USA Truck (NASDAQ: USAK), a leading capacity solutions provider, today announced an agreement under which DB Schenker will acquire all outstanding shares of USA Truck common stock for \$31.72 per share in cash. The transaction values USA Truck at approximately \$435 million, including assumed cash and debt.

The combination advances DB Schenker and USA Truck's shared vision to become the premier North American transportation solutions provider. Upon completion of the transaction, DB Schenker aims to strengthen and expand USA Truck's presence in North America, while utilizing its complementary international logistics expertise, air transport services and ocean gateways to benefit USA Truck's existing customer base. Building upon USA Truck's existing U.S. and Mexico

freight network, DB Schenker also intends to expand its global logistics services across land, air, and ocean transportation services, as well as comprehensive solutions for logistics and global supply chain management.

Founded in 1983, USA Truck provides comprehensive capacity solutions to a diverse North American customer base, including more than 20% of the FORTUNE 100. USA Truck's approximately 1,900-unit fleet of trucks, 2,100 employees, partnerships with more than 36,000 active contract carriers, strategic network of terminals across the Eastern half of the United States and a nationwide third-party logistics presence provides capacity solutions to meet the evolving demands of both regional and national customers.

"USA Truck is the perfect match for DB Schenker's strategic ambition to expand our network in North America and foster our position as a leading global logistics provider," said Jochen Thewes, CEO of DB Schenker. "In our 150th anniversary year, we are pleased to welcome one of the leading trucking and logistics providers to DB Schenker. Together we will enhance our shared value proposition and invest in exciting growth opportunities and sustainable logistics solutions for new and existing clients."

"We are thrilled to have found a partner that appreciates USA Truck's rich history, is closely aligned with our mission and values, and brings additional resources that we believe enable us to build on our nearly 40-year legacy of industry leadership," said James Reed, President and Chief Executive Officer of USA Truck. "This transaction provides immediate and significant value for USA Truck stockholders, offers broadened career opportunities for our employees and increased capacity and service offerings with which to support our customers, and better positions our company to realize our long-term vision to become the premier North American transportation solutions provider."

"This transaction recognizes the culture of excellence James, his team and all of our dedicated employees have created and commit to every day at USA Truck. It rewards our stockholders for their unwavering support during our turnaround and through the pandemic and offers further opportunity for our customers to draw upon USA Truck's strengths utilizing the resources and reach of one of the world's leading logistics services organizations," commented Alexander Greene, Chairman of the Board of USA Truck.

Joe Jaska, DB Schenker's Executive Vice President Land Transport, Americas Region commented, "USA Truck's success has been driven by their impressive employees – all of whom are critical to future growth – and we look forward to welcoming them as an integral part of our team. As part of a larger organization with DB Schenker, USA Truck employees will have access to career opportunities at both the local and global level. We view this transaction as a platform for growth and by combining these organizations, we will greatly enhance our presence in the North American land transport space."

With more than 76,000 employees at more than 1,850 locations in over 130 countries, DB Schenker, a 100 percent subsidiary of Deutsche Bahn, is one of the world's leading logistics providers. The company operates land, air, and ocean transportation services, and it also offers comprehensive solutions for logistics and global supply chain management from a single source. In the Americas, DB Schenker is one of the largest integrated logistics service providers with more than 10,000 employees in 123 locations providing over 27 million sq. ft. of distribution operations to its clients. With integrated partners across the Americas, DB Schenker provides the best combination of intimate local practices knowledge and global capabilities.

Transaction Details

The transaction, which has been unanimously approved by USA Truck's Board of Directors, is subject to certain regulatory reviews and approvals and the satisfaction of other customary closing conditions, including the approval of USA Truck stockholders. Upon completion of the transaction, which the parties expect will occur by the end of 2022, USA Truck will become a private company and delist from NASDAQ Global Select Market. The transaction is not subject to any financing condition.

B. The Materially Incomplete and Misleading Proxy

22. On August 3, 2022, Defendants filed the Proxy with the SEC. The purpose of the Proxy is, *inter alia*, to provide the Company's stockholders with all material information necessary for them to make an informed decision on whether to vote in favor of the Proposed Transaction. However, significant and material facts were not provided to Plaintiff. Without such information, Plaintiff cannot make a fully informed decision concerning whether to vote in favor of the Proposed Transaction.

Materially Incomplete and Misleading Disclosures Concerning the Management-Prepared Financial Forecasts

23. The Proxy discloses management-prepared financial projections for the Company which are materially misleading. The Proxy indicates that in connection with the rendering of Evercore's fairness opinion, Evercore reviewed "certain non-public projected financial and operating data relating to the Company prepared and furnished to Evercore by management of the

Company, as approved for Evercore's use by the Company." Accordingly, the Proxy should have, but failed to, provide certain information in the projections that USA Truck's management provided to the Board and Evercore.

24. Notably, Defendants failed to disclose the line item entries forming the basis of each of the following: (a) Operating revenue excluding fuel charge; (b) Adjusted operating income; (c) Adjusted earnings per diluted share; (d) Adjusted operating ratio; (e) Adjusted EBITDAR; (f) Adjusted EBITDA; (g) Adjusted EBIT; (h) Net Operating Profit After Tax; and (a) Unlevered Free Cash Flow.

25. This omitted information is necessary for Plaintiff to make an informed decision on whether to vote in favor of the Proposed Transaction.

Materially Incomplete and Misleading Disclosures Concerning Evercore's Financial Analyses

26. With respect to the *Discounted Cash Flow Analysis*, the Proxy fails to disclose: (a) the terminal year unlevered, after-tax free cash flow of USA Truck; (b) the Company's terminal values; (c) the key data, inputs, and assumptions forming the basis of the range of discount rates applied by Evercore; (d) the Company's cash, debt, and finance lease obligations; and (v) the Company's outstanding shares on a fully diluted basis.

27. With respect to the *Selected Public Company Trading Multiples Analysis*, the Proxy fails to disclose (a) the specific financial multiples and metrics for each of the companies; (b) the estimated EBITDA and earnings per share for fiscal years 2022 and 2023; (c) the cash, debt, and finance lease obligations of USA Truck; and (d) the Company's outstanding shares on a fully diluted basis.

28. With respect to the *Premiums Paid Analysis*, the Proxy fails to disclose the specific transactions studied by Evercore, as well as the individual premiums for each of the transactions.

29. With respect to the *Equity Research Analyst Price Targets Analysis*, the Proxy fails to disclose the specific price targets and the sources of those price targets studied by Evercore.

30. This information is necessary to provide Company stockholders a complete and accurate picture of the sales process and its fairness. Without this information, Plaintiff is not fully informed as to the Defendants' actions, including those that may have been taken in bad faith, and cannot fairly assess the process. And without all material information, Plaintiff is unable to make a fully informed decision in connection with the Proposed Transaction and faces irreparable harm, warranting the injunctive relief sought herein.

31. In addition, the Individual Defendants knew or recklessly disregarded that the Proxy omits the material information concerning the Proposed Transaction and contains the materially incomplete and misleading information discussed above.

32. Specifically, the Individual Defendants undoubtedly reviewed the contents of the Proxy before it was filed with the SEC. Indeed, as directors of the Company, they were required to do so. The Individual Defendants thus knew or recklessly disregarded that the Proxy omits the material information referenced above and contains the incomplete and misleading information referenced above.

33. Further, the Proxy indicates that on June 23, 2022, Evercore reviewed with the Board its financial analysis of the Merger Consideration and delivered to the Board an oral opinion, which was confirmed by delivery of a written opinion of the same date, to the effect that the Merger Consideration was fair, from a financial point of view, to USA Truck stockholders. Accordingly, the Individual Defendants undoubtedly reviewed or were presented with the material information concerning Evercore's financial analyses which has been omitted from the Proxy, and thus knew or should have known that such information has been omitted.

34. Plaintiff is immediately threatened by the wrongs complained of herein, and lacks an adequate remedy at law. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that he will continue to suffer absent judicial intervention.

CLAIMS FOR RELIEF

COUNT I

Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9

35. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

36. Defendants have filed the Proxy with the SEC with the intention of soliciting USA Truck stockholder support for the Proposed Transaction. Each of the Individual Defendants reviewed and authorized the dissemination of the Proxy, which fails to provide the material information referenced above.

37. In so doing, Defendants made materially incomplete and misleading statements and/or omitted material information necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as officers and/or directors of USA Truck, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a).

38. Rule 14a-9, promulgated by the SEC pursuant to Section 14(a) of the Exchange Act, provides that such communications with stockholders shall not contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.” 17 C.F.R. § 240.14a-9.

39. Specifically, and as detailed above, the Proxy violates Section 14(a) and Rule 14a-9 because it omits material facts concerning: (i) management’s financial projections; and (ii) the

value of USA Truck shares and the financial analyses performed by Evercore in support of its fairness opinion.

40. Moreover, in the exercise of reasonable care, the Individual Defendants knew or should have known that the Proxy is materially misleading and omits material information that is necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Transaction; indeed, the Proxy states that Evercore reviewed and discussed its financial analyses with the Board on June 21, 2022, and further states that the Board considered Evercore's financial analyses and fairness opinion in connection with approving the Proposed Transaction. The Individual Defendants knew or should have known that the material information identified above has been omitted from the Proxy, rendering the sections of the Proxy identified above to be materially incomplete and misleading.

41. The misrepresentations and omissions in the Proxy are material to Plaintiff, who will be deprived of his right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Transaction. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT II

Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

42. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

43. The Individual Defendants acted as controlling persons of USA Truck within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as

officers and/or directors of USA Truck and participation in and/or awareness of the Company's operations and/or intimate knowledge of the incomplete and misleading statements contained in the Proxy filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that Plaintiff contends are materially incomplete and misleading.

44. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements alleged by Plaintiff to be misleading prior to the time the Proxy was filed with the SEC and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

45. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the Exchange Act violations alleged herein, and exercised the same. The omitted information identified above was reviewed by the Board prior to voting on the Proposed Transaction. The Proxy at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of the Proxy.

46. In addition, as the Proxy sets forth at length, and as described herein, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

47. By virtue of the foregoing, the Individual Defendants have violated Section 20(a)

of the Exchange Act.

48. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff will be irreparably harmed.

RELIEF REQUESTED

WHEREFORE, Plaintiff demands injunctive relief in his favor and against the Defendants jointly and severally, as follows:

A. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from filing an amendment to the Proxy with the SEC or otherwise disseminating an amendment to the Proxy to USA Truck stockholders unless and until Defendants agree to include the material information identified above in any such amendment;

B. Preliminarily and permanently enjoining Defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from proceeding with, consummating, or closing the Proposed Transaction, unless and until Defendants disclose the material information identified above which has been omitted from the Proxy;

C. In the event that the transaction is consummated prior to the entry of this Court's final judgment, rescinding it or awarding Plaintiff rescissory damages;

D. Directing the Defendants to account to Plaintiff for all damages suffered as a result of their wrongdoing;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

F. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: August 28, 2022

ROWLEY LAW PLLC

S/ Shane T. Rowley

Shane T. Rowley (SR-0740)

Danielle Rowland Lindahl

50 Main Street, Suite 1000

White Plains, NY 10606

Tel: (914) 400-1920

Fax: (914) 301-3514

Email: srowley@rowleylawpllc.com

Email: drl@rowleylawpllc.com

Attorneys for Plaintiff